

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

JUL 22 4 13 PM '93

MM Docket No. 93-189

DISPATCHED BY

In re Application of

Stephen W. Yates

For Renewal of License of
Station KSRK(AM),
Lufkin, Texas

BR-900402E6

HEARING DESIGNATION ORDER

Adopted: June 17, 1993;

Released: June 28, 1993

By the Chief, Audio Services Division:

1. The Chief, Audio Services Division, Mass Media Bureau, has before him: (a) the captioned application for renewal of license filed by Stephen W. Yates, licensee of KSRK(AM), Lufkin, Texas;¹ and, (b) the results of an investigation into KSRK(AM)'s silent status.²

2. The Commission's records indicate that KSRK(AM) has been silent since May 20, 1988.³ The station's authority to remain silent expired on June 3, 1993. The current renewal of license application for KSRK(AM) has not been acted upon because of the station's silent status.⁴ Since the 1990 assignment of license, there is no evidence that Mr. Yates has ever commenced station operations.

3. By letter dated July 27, 1992, Mr. Yates requested that the Commission cancel the KSRK(AM) license. Prior to Commission action on that request, Mr. Yates, by letter dated November 10, 1992, indicated that he had found an

individual willing to invest the necessary funds to return KSRK(AM) to the air and withdrew his request for cancellation of the station's license. Acknowledging the changed circumstances surrounding the withdrawal request, the Chief, AM Branch, Audio Services Division, Mass Media Bureau, by letter dated March 3, 1993, notified Mr. Yates that KSRK(AM) would receive silent authority until June 3, 1993, with the condition that any further requests for silent authority be accompanied by a detailed summary of steps taken to return the station to the air. No further requests have been received. Moreover, no application proposing the assignment of the KSRK(AM) license or for a construction permit to improve the facilities of KSRK(AM) has been filed with the Commission. Consequently, KSRK(AM) is currently off the air without authority. This fact, coupled with the fact that KSRK(AM) has been off the air for over five years, supports our determination that Mr. Yates is in apparent violation of Sections 73.1740(a)(4) (Minimum Operating Schedule) and 73.1750 (Discontinuance of Operation) of the Commission's Rules.⁵ We believe that the evidence before us is sufficient to raise a substantial and material question of fact regarding Mr. Yates' capability and intent to resume the broadcast operations of KSRK(AM). We will therefore designate the KSRK(AM) renewal of license application for an evidentiary hearing on appropriate issues specified below.

4. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. Sec. 309(e), the renewal of license applications of Station KSRK(AM), Lufkin, Texas, IS DESIGNATED FOR HEARING at a time and place to be specified in a subsequent Order, upon the following issues:

(a) To determine whether Stephen W. Yates has the capability and intent to expeditiously resume broadcast operations of KSRK(AM) consistent with the Commission's Rules.

(b) To determine whether Stephen W. Yates has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules;

¹ The Commission consented to the assignment of the KSRK(AM) license from Pine Air, Inc. to Mr. Yates on January 10, 1990. The sale of the station was consummated on May 10, 1990.

² The Mass Media Bureau has been delegated authority to designate for hearing the renewal of license applications of silent broadcast stations. See *Moenkopi Communications, Inc.*, 8 FCC Rcd _____, FCC 93-273, adopted May 25, 1993.

³ The reason given for the initial request for silent authority was to allow time to make necessary repairs to the station due to fire-damage.

⁴ It is the Commission's general policy to defer action on a station's renewal of license application while that station is silent.

⁵ Section 73.1740(a)(4) provides:

"In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontin-

ued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary."

Section 73.1750 provides:

"The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation."

(c) To determine, in light of the evidence adduced pursuant to the preceding issues, whether grant of the subject renewal of license application would serve the public interest, convenience and necessity.

FEDERAL COMMUNICATIONS COMMISSION

5. IT IS FURTHER ORDERED, That, in the event it is determined that grant of the renewal of license application would serve the public interest, convenience and necessity, the grant will be conditioned on the expeditious resumption of operation, the precise period of time to be established in the hearing. Failure to resume operations within the time specified in the condition will result in the cancellation of the license and the deletion of the station's call letters.

Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

6. IT IS FURTHER ORDERED, That, in accordance with Section 309(e) of the Communications Act of 1934, as amended, both the BURDEN OF PROCEEDING with the introduction of evidence and the BURDEN OF PROOF with respect to the issues specified above shall be upon the LICENSEE. Stephen W. Yates.

7. IT IS FURTHER ORDERED, That, to avail itself of the opportunity to be heard, the licensee, pursuant to Section 1.221(c) of the Commission's Rules, SHALL FILE with the Commission, in person or by attorney, within twenty (20) days of the mailing of this Order, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

8. IT IS FURTHER ORDERED, That the licensee herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rules, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

9. IT IS FURTHER ORDERED, That, if it is determined that the hearing record does not warrant an Order denying the renewal of license application of KSRK(AM), Lufkin, Texas, it shall be determined, pursuant to Section 503(b) of the Communications Act of 1934, as amended, whether an ORDER OF FORFEITURE shall be issued against the licensee in an amount not exceeding \$250,000.00 for the willful and/or repeated violation of Section 73.1740 and/or 73.1750 of the Commission's Rules.

10. IT IS FURTHER ORDERED, That, in connection with the possible forfeiture liability noted above, this document constitutes notice pursuant to Section 503(b)(3) of the Communications Act of 1934, as amended. The Commission has determined that, in every case designated for hearing involving revocation or denial of assignment, transfer, or renewal of license for alleged violations which also come within the purview of Section 503(b) of the Communications Act of 1934, as amended, it shall, as a matter of course, include this forfeiture notice so as to maintain the fullest possible flexibility of action. Accordingly, we stress that the inclusion of this notice is not to be taken as in any way indicating what the initial or final disposition of this case should be.